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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/877,549	06/08/2001	Michael Florence	52126.00008 (Digeo 95)	9126
32641	7590	08/02/2006	EXAMINER	
DIGEO, INC C/O STOEL RIVES LLP 201 SOUTH MAIN STREET, SUITE 1100 ONE UTAH CENTER SALT LAKE CITY, UT 84111			SALCE, JASON P	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 08/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/877,549	<b>Applicant(s)</b> FLORENCE, MICHAEL	
	<b>Examiner</b> Jason P. Salce	<b>Art Unit</b> 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) See Continuation Sheet is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-7,9-15,17-19,21-26,28-39,41-53,55,56,58,59,61,65-74 and 76 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Continuation of Disposition of Claims: Claims pending in the application are 1-3,5-7,9-15,17-19,21-26,28-39,41-53,55,56,58,59,61,65-74 and 76.

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed 4/07/2006 with respect to claims 1, 13 and 26 and all corresponding dependent claims have been fully considered but they are not persuasive.

Applicant has amended the claim to include the limitations of claim 4 and states that the phrase "favorites display preference" means a preference in the manner, arrangement, ordering, style, etc. in which the favorites are displayed. The examiner notes again Figure 2 for the viewer profile, which is representative of the list of a viewer's favorite programs, which are used to only display favorite channel in an EPG, thereby providing a favorites display preference (the arrangement of the channels displayed by the EPG). Further note Figure 5 for an example of an EPG which adheres to the viewer's profile and only displays the viewer favorite programs, therefore, Bedard clearly teaches that the favorites table teaches a favorites display preference, because the table is indicative of what channels will be displayed by the EPG and which are not (further note Column 7, Lines 39-64).

2. Applicant's arguments (see pages 19-21) filed 4/7/2006, with respect to the rejection(s) of claim(s) 9, 21 and 31 under 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Bedard.

In regards to claims 9, 21 and 31, the examiner agrees with the Applicant and notes the cited portion (by the Applicant) of Bedard at Column 3, Line 63 through Column 4, Line 14, which actually teaches that updating is performed if the calculated time different is larger than about ten seconds (see Column 4, Lines 7-12 for the calculated time different being larger than ten seconds (1, 5, 10 or 15 minute durations). Therefore, the examiner should have maintained the 102(b) rejection and a corrected rejection is provided below.

3. Applicant's arguments filed 4/07/2006 with respect to claims 25, 35 and 61 and all corresponding dependent claims have been fully considered but they are not persuasive.

In regards to claims 25, 35 and 61, Applicant argues that the examiner has not satisfied the initial burden because the claims are written in 112 6<sup>th</sup> paragraph forms. The examiner notes that the system clearly creates a list of favorite channels based on the same calculation methods taught by Applicant's invention, this clearly shows an equivalent structure. Applicant has stated that the Office Action has done nothing more than allege that the cited reference (Bedard) perform the identical functions recited in the claims. Since the examiner has made such an allegation of a clear teaching of identical functions, then clearly a basis for equivalence has been met and it is now the burden of the Applicant to prove how an equivalent structure is not met by the teachings of Bedard.

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4. Applicant's arguments filed 4/07/2006 with respect to claims 35, 43-51 and 65-74 and all corresponding dependent claims have been fully considered but they are not persuasive.

Applicant argues that the motivation to combine the teaching of Bedard and Alexander is not proper and only teaches broad objects of Alexander's overall invention. The examiner disagrees and notes that one would look to Alexander to alleviate the user's television equipment from performing the calculations of determining a user's list of favorite programs for many reasons, which all relate to the motivation stated by Alexander. First, allowing the headend to collect, analyze and process all of the channel viewing data would alleviate programmer from having to write and load code onto each and every viewer equipment used by a viewer, not to mention provide code for each and every type of different brand of viewer equipment (which may require a completely different programming language). Providing such an advantage would not only reducing the cost of the different types of viewer equipment, but also require only one program to be written that would reside in the headend of the cable system. Second, note Column 32, Lines 24-39 for using the profile data to schedule specific user-preferred advertisements. This provides even further motivation to combine the teachings of Alexander with the system of Bedard so that advertisers can attain a more effective system for enticing users to the advertisers product or service.

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5. Applicant's arguments filed 4/07/2006 with respect to claims' 36-39, 41-42, 52-53, 55-56 and 58-59 and all corresponding dependent claims have been fully considered but they are not persuasive.

Applicant argues that Bedard does not disclose a plurality of channels listed based upon the number of times the respective channels have been watched. The examiner disagrees and notes that the viewing units represent how many times a program has been watched (see Column 4, Lines 27-65 for each viewing unit being for when a user views a program for more than one viewing unit and the profile shown in Figure 2 counts the number of viewing units, therefore counting the number of times a viewer watched a program). Therefore, Bedard clearly teaches, "*a plurality of channels listed based upon the number of times the respective channels have been watched*".

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-3, 5-7, 10-20, 22-30, 32-34, 36-42, 52-61 and 75-76 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bedard (U.S. Patent No. 5,801,747).

Referring to claim 1, Bedard discloses a method for generating a list of favorites (see Figure 3) in an interactive television system (see Figure 4).

Bedard also discloses receiving a first notification, the first notification indicating a first channel activity (see step 300 in Figure 3 and Column 5, Lines 34-36).

Bedard also discloses receiving a second notification, the second notification indicating a second channel activity (see step 302 in Figure 3 and Column 5, Lines 36-37).

Bedard also discloses calculating a time difference between the first and the second notification (see step 304 in Figure 3 and Column 5, Lines 37-42).

Bedard also discloses updating a channel favorites table based on the calculated time difference (see step 312 in Figure 3 and Column 5, Lines 49-55), wherein the favorites table includes a favorites display preference (note Figure 2 for the viewer profile, which is representative of the list of a viewer's favorite programs, which are used to only display favorite channel in an EPG, thereby providing a favorites display preference (the arrangement of the channels displayed by the EPG)).

Referring to claim 2, Bedard discloses that the updating includes adding the calculated time difference (the determination of if the time difference between channel changes exceeds a viewing time period at Column 5, Lines 37-42) to a first channel cumulative time field in the favorites table (see Figure 2 for a cumulative (total units) field in the favorites table and Column 4, Lines 51-54 for adding viewing units to the total viewing counter 204 field if a viewing unit is determined for a particular category in the channel favorites table).



Referring to claim 3, Bedard discloses updating further includes incrementing a counter in a first channel view frequency field of the favorites table (see field 206 in Figure 2 and Column 4, Lines 49-51 for an individual unit counter 206, which is incremented each time a program category is selected for each channel).

Referring to claim 5, Bedard discloses displaying a list of channels from the channel favorites table (see Figure 5 and Column 7, Lines 39-41).

Referring to claim 6, Bedard discloses that the list of channels is displayed according to the favorites display preference (see again Figure 5 and Column 7, Lines 39-41).

Referring to claim 7, Bedard discloses identifying a viewer of the interactive television system (see Figure 5 for identifying that the current viewer is "XINA").

Referring to claim 9, Bedard discloses a method for generating a list of favorites (see Figure 3) in an interactive television system (see Figure 4).

Bedard also discloses receiving a first notification, the first notification indicating a first channel activity (see step 300 in Figure 3 and Column 5, Lines 34-36).

Bedard also discloses receiving a second notification, the second notification indicating a second channel activity (see step 302 in Figure 3 and Column 5, Lines 36-37).

Bedard also discloses calculating a time difference between the first and the second notification (see step 304 in Figure 3 and Column 5, Lines 37-42).

Bedard also discloses updating a channel favorites table based on the calculated time difference being larger than about ten seconds (see step 312 in Figure 3 and Column 5, Lines 49-55 and Column 3, Line 63 through Column 4, Line 14, which actually teaches that updating is performed if the calculated time different is larger than about ten seconds (see Column 4, Lines 7-12 for the calculated time different being larger than ten seconds (1, 5, 10 or 15 minute durations)).

Referring to claim 10, Bedard discloses that the first and second activities include selecting a first and second channel, respectively (see Column 3, Lines 16-32 for selecting channels through an EPG).

Referring to claim 11, Bedard discloses that the first and second activities include selecting a first and second channel, respectively (see Column 5, Lines 34-38 and Figure 3).

Referring to claim 12, Bedard discloses that the first and second activities include viewing a first and second channel, respectively (see again Column 5, Lines 34-38 and Figure 3).

Referring to claims 13-15 and 17-19, see the rejection of claims 1-3 and 5-7, respectively.

Referring to claims 21-24, see the rejection of claims 9-12, respectively.

Referring to claims 25, see the rejection of claim 1.

Referring to claim 26, see the rejection of claim 1.

Referring to claim 28, see the rejection of claims 5-6.

Referring to claim 29, see the rejection of claim 7.

Referring to claim 30, Bedard discloses that the generation engine (the software that creates the EPG based on the favorite program calculations) and the display engine (the television) are capable to filter channel changes based on the calculated time difference (see Figure 3 for the software that calculates favorite channels and stores the results in memory and Figure 5 for the display engine displaying the favorite channels calculated by the algorithm of Figure 3).

Referring to claim 31, see the rejection of claim 9.

Referring to claims 32-34, see the rejection of claims 10-12, respectively.

Referring to claims 36-37 and 39, see the rejection of claim 1. Further note that the viewing units represent how many times a program has been watched (see Column 4, Lines 27-65 for each viewing unit being for when a user views a program for more than one viewing unit and the profile shown in Figure 2 counts the number of viewing units, therefore counting the number of times a viewer watched a program). Therefore, Bedard clearly teaches, "*a plurality of channels listed based upon the number of times the respective channels have been watched*".

Referring to claim 38, Bedard discloses that the list includes a plurality of channels listed based upon an associated numeral of a channel (see Column 1, Lines 45-50 for EPG being capable of displaying a channel number).

Referring to claim 41, Bedard discloses that the list is associated with a first identification (see Figure 2 for the list being associated with name of the channel, which represents a first identification).

Referring to claim 42, Bedard discloses that the generation engine is capable to generate a second list associated with a second identification (see Column 3, Lines 49-52 for storing multiple viewer profiles (lists) associated with identifications of different viewers, respectively).

Referring to claims 52-53, see the rejection of claim 36-37.

Referring to claims 55-56 and 58-59, see the rejection of claims 38-39 and 41-42, respectively.

Referring to claim 61, see the rejection of claim 1.

Referring to claim 76, see the rejection of claims 1 and 10 and further note that Bedard also teaches the limitations of prompting a viewer, after receiving the second electronic program guide notification (user changes the channel for a first program to a second program) for authorization to update a channel favorites list (note that if the EPG in Figure 5 is displayed and a user selects a program then the program can be watched for a specified viewing time period (see the rejection of claim 1)) and if authorization is received (the program is viewed for a specified time period), updating the channel favorites list (see the rejection of claim 1). The examiner notes that the prompting limitation is being specifically interpreted as the user using the EPG (the prompt) for updating the favorite channel list, every time a program is selected from the EPG and that in order for a favorite program list to be updated, a second EPG notification must be received and the program must have been viewed for the predetermined time period.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 35, 43-51 and 65-74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bedard (U.S. Patent No. 5,801,747) in view of Alexander et al. (U.S. Patent No. 6,177,931).

Referring to claim 35, see the rejection of claim 1 (above) for Bedard teaching the favorite program channel table accumulation, calculation and display method.

Bedard also teaches a "push" model for accessing an external source of information (see Column 8, Lines 51-63).

However, Bedard is silent as to the creation of the favorite channel list being performed at a server.

Alexander discloses that the processing can be performed at either locally or remotely (at a television headend) at Column 28, Line 10 through Column 30, Line 58.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the local (set-top box) calculation of the favorite channel list, as taught by Bedard, to be performed at a server (television headend), as taught by Alexander, for the purpose of providing improved features to the EPG display and navigation (see Column 2, Line 8 of Alexander).

Referring to claim 43, see the rejection of claim 35 and further note that Bedard teaches that the receiving device on the viewer's side of the network can include a set-top box (see Column 3, Lines 4-8).

Claim 44 corresponds to claim 43, where Alexander further discloses that the processing device is capable to transmit a list including at least one favorite channel to the set top box to enable the display of the list (see Column 29, Lines 31-34 for the viewer profile analysis software being resident at the headend, therefore, if Alexander uses the viewer profile data to create a favorite program list (see Column 30, Lines 45-58), then the system of Alexander would be required to send the results to the viewer's set top device, otherwise the favorite channel list would not be able to display the results of the viewer profile analysis process executed at the headend).

Claim 45 corresponds to claim 43, where Alexander further teaches that the device is capable to transmit an HTML link to the set top box, where the HTML link is associated with a list including at least one favorite channel (see Column 8, Lines 36-61 and note that an Internet web page transmitted to a client devices includes an HTML link).

Claims 46-51 correspond to claim 43, where Bedard further teaches all of the limitations of these claims in the rejection of claims 37-42 (see above).

Referring to claims 65-67, see the rejection of claims 43-45, respectively.

Referring to claims 68-69, see the rejection of claim 43.

Referring to claims 70-74, see the rejection of claims 47-51, respectively.

### ***Conclusion***

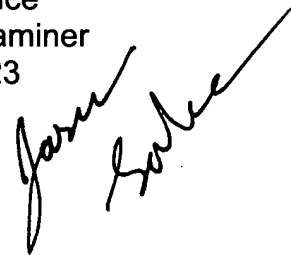
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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason P Salce  
Primary Examiner  
Art Unit 2623

A handwritten signature in black ink, appearing to read 'Jason P. Salce', written in a cursive style.

July 26, 2006